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C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000360

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NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER
LONDON FOR C. GURNEY
PARIS FOR C. NEARY
NAIROBI FOR T. PFLAUMER

E.O. 12958: DECL: 02/20/2013

TAGS: [PGOV](#) [PHUM](#) [ZI](#)

SUBJECT: TSVANGIRAI TRIAL: BEN-MENASHE CROSS-EXAMINATION
CONTINUES

REF: A. HARARE 313

[B](#). HARARE 259

Classified By: POLITICAL OFFICER KIMBERLY JEMISON FOR REASONS 1.5 (B) A
ND (D).

Summary. 1. (C) The treason trial of Movement for Democratic Change (MDC) officials Morgan Tsvangirai, Welshman Ncube, and Renson Gasela entered its fourteenth day on February 20. Since February 12, defense counsel has continued its intensive cross-examination of the state's star witness, Ari Ben-Menashe. Lead defense attorney George Bizos tried to discredit Ben-Menashe by highlighting the inconsistencies in his testimony about his U.S. contacts, financial transactions between Dickens & Madson (DM) and the Government of Zimbabwe (GOZ), details of the second and third meetings with the defendants, and the legitimacy of DM. Presiding Judge Paddington Garwe has tried to assert his authority more by cutting short Ben-Menashe's tirades and ordering him to listen to and answer Bizos's questions succinctly. Nonetheless, Ben-Menashe has continued to engage in outrageous behavior in court, dismissing questions he did not want to answer and using inappropriate language. End Summary.

Financial Transactions -----

[2](#). (U) Bizos resumed his cross-examination on the afternoon of February 12, after the issue of the contract with the Government of Zimbabwe was resolved that same morning (see reftel). Bizos began by asking Ben-Menashe whether he had received payment for the videotape of the third meeting, a charge Ben-Menashe vehemently denied, claiming he never received money "personally". Ben-Menashe maintained that he passed on the money to the people who were in charge of creating the videotape. Bizos also asked if Ben-Menashe had received money from the GOZ before signing the January 10, 2002 contract. Ben-Menashe maintained that he had had no contact with the GOZ prior to the contract.

[3](#). (U) On February 19, Bizos revisited the issue of payment when he asked Ben-Menashe about several documents (financial account statements, contracts, and certificate of registration) the defense asked him to produce for the court. Ben-Menashe had none of the documents, claiming that some of the financial account information, which might have shown financial transactions between DM and the GOZ, had been destroyed. He also claimed he could not get some of the requested bank information because of pending lawsuits against DM by the MDC and an Australian company.

Discrediting Ben-Menashe and Dickens & Madson -----

[4](#). (U) Throughout the week, Bizos chipped away at Ben-Menashe's credibility. On February 13, Bizos attempted to introduce evidence that would attest to Ben-Menashe's soiled reputation and lack of credibility. The evidence was a list of documents from press sources and a former employee. The prosecutor tried to get the court to limit challenges to Ben-Menashe's credibility. The judge entertained arguments from both sides as to the various pieces of evidence submitted by the defense and called for a recess about one hour into the hearing. Court reconvened after lunch and the documents were not entered into evidence.

[5](#). (U) On February 19, Bizos began his attack of DM by asking for copies of the certificates of registration and questioning Ben-Menashe about the principal officers in the company. Ben-Menashe told Bizos that he would not provide documents that are available in the public domain. Bizos informed Ben-Menashe that the defense could not find the certificates. Bizos said he had reason to believe DM was not registered. Bizos asked the judge to invoke a section of the Criminal Procedure and Evidence Act that gives the judge power to commit a witness to prison for failing to answer questions or failing/refusing to produce documents without a just excuse. Bizos has said that if the certificate of registration, financial account statements, and a list of

employees were not produced, then the defense would oppose Ben-Menashe's requests to leave the country prior to completion of his testimony.

16. (U) Bizos's next line of questioning concerned the principal officers in DM. According to Ben-Menashe, there are only four high-level people in the company: Alexander Legault as shareholder and financial officer, David Sullivan as accountant, Ben-Menashe as shareholder, and Francis Lang as director. When asked to explain the day-to-day activities of the person in the directorship position, Ben-Menashe could not provide an answer.

U.S. Contacts

17. (U) During the afternoon session on February 13, Bizos began to question Ben-Menashe about his contacts in the US Government and about the various meetings with the MDC. Ben-Menashe first claimed to know a high-level person in the State Department but refused to name the person. Later he denied knowing anyone in the State Department, claiming he only knew a high-level U.S. government official. Bizos resumed this line of questioning during the February 14 afternoon session but Ben-Menashe avoided answering the questions. Ben-Menashe maintained that Tsvangirai claimed to have contacted and won the support of the U.S. Government and the CIA in the coup plot. Bizos asked Ben Menashe that if Tsvangirai had already contacted the U.S. and taken other

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preparatory steps, then contracting DM was unnecessary. Ben-Menashe had no comment.

The Second and Third Meetings

18. (U) On February 18, Bizos focused on a fifteen-page typed transcript of the audio recording of the second meeting between Tsvangirai and Ben-Menashe in London, prepared by DM employee Tara Thomas, who was in attendance. To 90 percent of Bizos's questions, Ben-Menashe responded that he did not remember if the cited text was said. Perhaps embarrassed by the fact that Tsvangirai not once discussed Mugabe's assassination in the transcript, Ben-Menashe discredited Thomas's transcript, saying she picked out words here and there but that the tape was inaudible and the transcript did not reflect the totality of the meeting. (NOTE: On February 13, Ben-Menashe claimed he could not remember whom in the GOZ he had given the audiotape to nor could he remember who had transcribed the tape. END NOTE.)

19. (U) On February 20, Bizos again asked Ben-Menashe questions about the third, infamous meeting in Montreal. In response to Bizos's questions, Ben-Menashe's standard answer was that he did not remember. When asked if the purpose of the third meeting was to furnish evidence of a planned coup d'etat, Ben-Menashe responded in the affirmative. On February 13, Ben-Menashe maintained that he was never interested in having the MDC as a client and that he only met with them because he wanted to report the plot to the appropriate authorities in the U.S., Canada, and Zimbabwe.

Ben-Menashe, Garwe, and Bizos's Conduct

10. (C) Ben-Menashe continues to act outrageously in the witness box, regularly denigrating Bizos when asked questions he doesn't want to answer, interrupting Garwe and Bizos, and demonstrating a short fuse. Garwe appears to be getting tired of Ben-Menashe's antics and has begun directing him to answer questions directly and precisely. Garwe even shook his head after he had to stop Ben-Menashe in the middle of a tirade to ask him to answer the question, to which Ben-Menashe asked, "What was the question?"

11. (C) Bizos is also playing to the court. He frequently turns towards the journalists when Ben-Menashe goes off on a tangent and he has turned towards his clients and smiled when Ben-Menashe gets unnerved. Garwe cautioned Bizos against unnecessarily provoking Ben-Menashe.

Access

12. (U) It appears as though most interested parties are being admitted to the courtroom to witness the trial. Diplomats and independent journalists are present for every session, and members of the general public are still being granted access. The standing room only crowds have dwindled somewhat, and there are a few empty seats at each session.

SULLIVAN